

Jess B. Millikan, SBN 095540  
Samuel H. Ruby, SBN 191091  
BULLIVANT HOUSER BAILEY PC  
601 California Street, Suite 1800  
San Francisco, California 94108  
Telephone: 415.352.2700  
Facsimile: 415.352.2701  
jess.millikan@bullivant.com  
samuel.ruby@bullivant.com

Attorneys for Defendant  
United States Fire Insurance Company

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

COPART INC.,

Plaintiff,

vs.

CRUM & FORSTER INDEMNITY  
COMPANY,<sup>1</sup> UNITED STATES FIRE  
INSURANCE COMPANY, and DOES 1-10,

Defendants.

Case No.: C 07 02684 CW

**STATEMENT OF DISCOVERY  
REQUESTS AND RESPONSES IN  
DISPUTE IN SUPPORT OF U.S. FIRE'S  
MOTION TO COMPEL FURTHER  
RESPONSES AND FURTHER  
PRODUCTION OF DOCUMENTS**

Date: TO BE SET

Time:

Courtroom:

AND RELATED COUNTERCLAIMS.

<sup>1</sup> Dismissed by Order Upon Stipulation (6/15/07).

Pursuant to Civil L.R. No. 37-2, U.S. Fire submits the following statement of discovery requests and responses in dispute in support of its motion to compel further responses to its first set of document requests to Copart.

### **DOCUMENTS REQUESTS**

#### **DOCUMENT REQUEST NO. 7:**

7. All schedules of locations, statements of values, or similar documents prepared by you since July 1, 2003 for your insurance purposes.

#### **RESPONSE TO DOCUMENT REQUEST NO. 7:**

Copart objects to this request in that it is vague, ambiguous, overbroad, unduly burdensome and seeks documents neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to this objection, Copart will produce documents related to its property policies issued by USFIC.

#### **BASIS FOR COMPELLING FURTHER RESPONSE TO REQUEST NO. 7:**

Copart's objections lack merit. As evidenced by its willingness to produce "documents related to its property policies issued by USFIC," Copart understands the terms "schedule of locations" and "statements of values," which describe documents that Copart frequently submitted to its insurers. Copart offers no explanation as to why the request is "unduly burdensome." Without such justification, the objection is without merit. Obiajulu v. City of Rochester, 166 F.R.D. 293, 295 (W.D. N.Y. 1996).

Copart's relevancy objection also lacks merit. Information relevant to a party's claims or defenses is discoverable. Fed. R. Civ. P. 26(b)(1); Sanyo Laser Products, Inc. v. Arista Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003). Even if not directly relevant to U.S. Fire's claims and defenses, such information is relevant to the subject matter of this lawsuit and is therefore discoverable on a showing of good cause. Fed. R. Civ. P. 26 (b)(1); Sanyo Laser Products, Inc. v. Arista Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003). Moreover, the information is discoverable if it appears reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1); Vardon Golf Co., Inc. v. BBMG Golf Ltd., 156 F.R.D. 641 (N.D. Ill. 1994).

Request No. 7 is relevant—and not only with respect to documents submitted to U.S. Fire. Schedules of locations, statements of values, and similar documents prepared by Copart for other insurers could be relevant or lead to the discovery of admissible evidence, as they might show that the information provided to U.S. Fire was inaccurate. That fact would support U.S. Fire’s claim for negligent misrepresentation. Documents prepared for other insurers might also show that the damages Copart is claiming in this lawsuit are inconsistent with the values Copart reported to other parties, prior to this litigation, in the ordinary course of business.<sup>2</sup>

**DOCUMENT REQUEST NO. 8:**

8. All schedules of locations, statements of values, or similar documents prepared by Marsh since July 1, 2003 for your insurance purposes.

**RESPONSE TO DOCUMENT REQUEST NO. 8:**

Copart objects to this request in that it is vague, ambiguous, overbroad, unduly burdensome and seeks documents neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to this objection, Copart will produce documents related to its property policies issued by USFIC.

**BASIS FOR COMPELLING FURTHER RESPONSE TO REQUEST NO. 8:**

Copart’s objections lack merit. As evidenced by its willingness to produce “documents related to its property policies issued by USFIC,” Copart understands the terms “schedule of locations” and “statements of values,” which describe documents that Copart frequently submitted to its insurers. Copart offers no explanation as to why the request is “unduly burdensome.” Without such justification, the objection is without merit. Obiajulu v. City of Rochester, 166 F.R.D. 293, 295 (W.D. N.Y. 1996).

---

<sup>2</sup> While U.S. Fire has been preparing this motion, Copart’s counsel has asserted that Copart did not prepare any other schedules of locations or statements of values. However, counsel did not offer to amend Copart’s responses to confirm this assertion, and U.S. Fire has not received amended responses. As of this writing, Copart’s formal response to the document request continues to consist of objections.

1 Copart's relevancy objection also lacks merit. Information relevant to a party's claims  
 2 or defenses is discoverable. Fed. R. Civ. P. 26(b)(1); Sanyo Laser Products, Inc. v. Arista  
 3 Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003). Even if not directly relevant to U.S. Fire's  
 4 claims and defenses, such information is relevant to the subject matter of this lawsuit and is  
 5 therefore discoverable on a showing of good cause. Fed. R. Civ. P. 26 (b)(1); Sanyo Laser  
 6 Products, Inc. v. Arista Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003). Moreover, the  
 7 information is discoverable if it appears reasonably calculated to lead to the discovery of  
 8 admissible evidence. Fed. R. Civ. P. 26(b)(1); Vardon Golf Co., Inc. v. BBMG Golf Ltd., 156  
 9 F.R.D. 641 (N.D. Ill. 1994).

10 Request No. 8 is relevant—and not only with respect to documents submitted to U.S.  
 11 Fire. Schedules of locations, statements of values, and similar documents prepared by Marsh  
 12 for other insurers could be relevant or lead to the discovery of admissible evidence, as they  
 13 might show that the information provided to U.S. Fire was inaccurate. That fact would support  
 14 U.S. Fire's claim for negligent misrepresentation. Documents prepared for other insurers might  
 15 also show that the damages Copart is claiming in this lawsuit are inconsistent with the values  
 16 Marsh (on behalf of Copart) reported to other parties, prior to this litigation, in the ordinary  
 17 course of business.<sup>3</sup>

18 **DOCUMENT REQUEST NO. 15:**

19 15. All documents reflecting or relating to the construction of any buildings at Yard  
 20 105 after you acquired the yard.

21 **RESPONSE TO DOCUMENT REQUEST NO. 15:**

22 Copart objects that this request is vague, ambiguous, overbroad and unduly burdensome.  
 23 Without waiving and subject to this objection, Copart states that it is currently searching for  
 24  
 25

---

26 <sup>3</sup> While U.S. Fire has been preparing this motion, Copart's counsel has asserted that Marsh did  
 27 not prepare any other schedules of locations or statements of values. However, counsel did not  
 28 offer to amend Copart's responses to confirm this assertion, and U.S. Fire has not received  
 amended responses. As of this writing, Copart's formal response to the document request  
 continues to consist of objections.

documents evidencing its construction of building of Yard 105 and will produce those documents if they still exist in Copart's possession, custody or control.

**BASIS FOR COMPELLING FURTHER RESPONSE TO REQUEST NO. 15:**

Copart offers no explanation as to why the request is "unduly burdensome." Without such justification, the objection is without merit. Obiajulu v. City of Rochester, 166 F.R.D. 293, 295 (W.D. N.Y. 1996).

Copart agreed to produce documents responsive to this request in responses dated September 14, 2007.<sup>4</sup> Over two months later, no documents have been produced. If no such documents exist, U.S. Fire is entitled to know that. Copart should either produce the documents, or if no documents exist, amend its response accordingly.

**DOCUMENT REQUEST NO. 18:**

18. All lists o[r] schedules of real property assets prepared or maintained by you (or on your behalf) for accounting or tax purposes since July 1, 2003.

**RESPONSE TO DOCUMENT REQUEST NO. 18:**

Copart objects to this request in that it is vague, ambiguous, overbroad, unduly burdensome and seeks documents neither relevant to the issues in this action nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to these objections, Copart will produce Statement of Values forms ("SOVs") prepared for its USFIC property insurance purposes since July 1, 2003.

**BASIS FOR COMPELLING FURTHER RESPONSE TO REQUEST NO. 18:**

Copart's objections lack merit. As evidenced by its willingness to produce "Statement of Values forms ("SOVs") prepared for its USFIC property insurance purposes," Copart understands the term "schedules of real property assets," which describes information that Copart frequently submitted to its insurers. Copart offers no explanation as to why the request is "unduly burdensome." Without such justification, the objection is without merit. Obiajulu v. City of Rochester, 166 F.R.D. 293, 295 (W.D. N.Y. 1996).

<sup>4</sup> Attached as Exhibit B to the Declaration of Samuel H. Ruby filed herewith.

1 Copart's relevancy objection also lacks merit. Information relevant to a party's claims  
2 or defenses is discoverable. Fed. R. Civ. P. 26(b)(1); Sanyo Laser Products, Inc. v. Arista  
3 Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003). Even if not directly relevant to U.S. Fire's  
4 claims and defenses, such information is relevant to the subject matter of this lawsuit and is  
5 therefore discoverable on a showing of good cause. Fed. R. Civ. P. 26 (b)(1); Sanyo Laser  
6 Products, Inc. v. Arista Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003). Moreover, the  
7 information is discoverable if it appears reasonably calculated to lead to the discovery of  
8 admissible evidence. Fed. R. Civ. P. 26(b)(1); Vardon Golf Co., Inc. v. BBMG Golf Ltd., 156  
9 F.R.D. 641 (N.D. Ill. 1994).

10 In preparing to defend its denial of coverage and as support for its counterclaims, U.S.  
11 Fire seeks relevant information regarding lists or schedules of real property assets prepared or  
12 maintained by Copart (or on Copart's behalf) for accounting or tax purposes since July 1, 2003.  
13 Off the record, Copart has admitted that it creates schedules of real property assets, but it has  
14 declined to produce them, arguing that the information in the schedules will not impeach the  
15 information provided to U.S. Fire. However, U.S. Fire is not obligated to take Copart's word on  
16 this. U.S. Fire is entitled to see the documents. Any information concerning the values Copart  
17 attributes to its real property assets is relevant and/or could lead to the discovery of admissible  
18 evidence regarding the damages Copart seeks to recover. Furthermore, such information could  
19 prove that Copart underreported and thus misrepresented values. Although asset schedules  
20 might only reveal historical costs, even historical costs could be probative.

21 **DOCUMENT REQUEST NO. 19:**

22 19. All documents indicating or reflecting the replacement cost values of buildings  
23 owned by you at any time since July 1, 2003.

24 **RESPONSE TO DOCUMENT REQUEST NO. 19:**

25 Copart objects to this request in that it is vague, ambiguous, overbroad, unduly  
26 burdensome and seeks documents neither relevant to the issues in this action nor reasonably  
27 calculated to lead to the discovery of admissible evidence. Without waiving and subject to these  
28 objections, Copart will produce documents related to its property policies issued by USFIC.

**BASIS FOR COMPELLING FURTHER RESPONSE TO REQUEST NO. 19:**

Copart's objections lack merit. As evidenced by its willingness to produce "documents related to its property policies issued by USFIC," Copart understands the term "replacement cost values," which describes information that Copart frequently submitted to its insurers. Copart offers no explanation as to why the request is "unduly burdensome." Without such justification, the objection is without merit. Obiajulu v. City of Rochester, 166 F.R.D. 293, 295 (W.D. N.Y. 1996).

Copart's relevancy objection also lacks merit. Information relevant to a party's claims or defenses is discoverable. Fed. R. Civ. P. 26(b)(1); Sanyo Laser Products, Inc. v. Arista Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003). Even if not directly relevant to U.S. Fire's claims and defenses, such information is relevant to the subject matter of this lawsuit and is therefore discoverable on a showing of good cause. Fed. R. Civ. P. 26 (b)(1); Sanyo Laser Products, Inc. v. Arista Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003). Moreover, the information is discoverable if it appears reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1); Vardon Golf Co., Inc. v. BBMG Golf Ltd., 156 F.R.D. 641 (N.D. Ill. 1994).

Documents indicating or reflecting the replacement cost values of Copart's buildings would be relevant on two fronts. First, with respect to Yard 105, documents showing the true replacement cost might impeach the damages Copart is seeking to recover in this litigation. Furthermore, with respect to Yard 105 and all other yards, documents showing the true replacement costs might prove that the values Copart reported to U.S. Fire for purposes of premium calculations were misrepresented.

**DOCUMENT REQUEST NO. 20:**

20. All documents indicating or reflecting the replacement cost values of personal property (excluding computer equipment) at buildings owned by you at any time since July 1, 2003.

**RESPONSE TO DOCUMENT REQUEST NO. 20:**

Copart objects to this request in that it is vague, ambiguous, overbroad, unduly

1 burdensome and seeks documents neither relevant to the issues in this action nor reasonably  
2 calculated to lead to the discovery of admissible evidence. Without waiving and subject to these  
3 objections, Copart will produce documents related to its property policies issued by USFIC.

4 **BASIS FOR COMPELLING FURTHER RESPONSE TO REQUEST NO. 20:**

5 Copart's objections lack merit. As evidenced by its willingness to produce "documents  
6 related to its property policies issued by USFIC," Copart understands the term "replacement  
7 cost values" which describes information that Copart frequently submitted to its insurers.  
8 Copart offers no explanation as to why the request is "unduly burdensome." Without such  
9 justification, the objection is without merit. Obiajulu v. City of Rochester, 166 F.R.D. 293, 295  
10 (W.D. N.Y. 1996).

11 Copart's relevancy objection also lacks merit. Information relevant to a party's claims  
12 or defenses is discoverable. Fed. R. Civ. P. 26(b)(1); Sanyo Laser Products, Inc. v. Arista  
13 Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003). Even if not directly relevant to U.S. Fire's  
14 claims and defenses, such information is relevant to the subject matter of this lawsuit and is  
15 therefore discoverable on a showing of good cause. Fed. R. Civ. P. 26 (b)(1); Sanyo Laser  
16 Products, Inc. v. Arista Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003). Moreover, the  
17 information is discoverable if it appears reasonably calculated to lead to the discovery of  
18 admissible evidence. Fed. R. Civ. P. 26(b)(1); Vardon Golf Co., Inc. v. BBMG Golf Ltd., 156  
19 F.R.D. 641 (N.D. Ill. 1994).

20 Documents indicating or reflecting the replacement cost values of Copart's personal  
21 property would be relevant on two fronts. First, with respect to Yard 105, documents showing  
22 the true replacement cost might impeach the damages Copart is seeking to recover in this  
23 litigation. Furthermore, with respect to Yard 105 and all other yards, documents showing the  
24 true replacement costs might prove that the values Copart reported to U.S. Fire for purposes of  
25 premium calculations were misrepresented.

26 **DOCUMENT REQUEST NO. 21:**

27 21. All documents indicating or reflecting the replacement cost values of computer  
28 equipment at buildings owned by you at any time since July 1, 2003.



**RESPONSE TO DOCUMENT REQUEST NO. 21:**

Copart objects to this request in that it is vague, ambiguous, overbroad, unduly burdensome and seeks documents neither relevant to the issues in this action nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to these objections, Copart will produce documents related to its property policies issued by USFIC.

**BASIS FOR COMPELLING FURTHER RESPONSE TO REQUEST NO. 21:**

Copart's objections lack merit. As evidenced by its willingness to produce "documents related to its property policies issued by USFIC," Copart understands the term "replacement cost values," which describes information that Copart frequently submitted to its insurers. Copart offers no explanation as to why the request is "unduly burdensome." Without such justification, the objection is without merit. Obiajulu v. City of Rochester, 166 F.R.D. 293, 295 (W.D. N.Y. 1996).

Copart's relevancy objection also lacks merit. Information relevant to a party's claims or defenses is discoverable. Fed. R. Civ. P. 26(b)(1); Sanyo Laser Products, Inc. v. Arista Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003). Even if not directly relevant to U.S. Fire's claims and defenses, such information is relevant to the subject matter of this lawsuit and is therefore discoverable on a showing of good cause. Fed. R. Civ. P. 26 (b)(1); Sanyo Laser Products, Inc. v. Arista Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003). Moreover, the information is discoverable if it appears reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1); Vardon Golf Co., Inc. v. BBMG Golf Ltd., 156 F.R.D. 641 (N.D. Ill. 1994).

Documents indicating or reflecting the replacement cost values of Copart's computer equipment would be relevant on two fronts. First, with respect to Yard 105, documents showing the true replacement cost might impeach the damages Copart is seeking to recover in this litigation. Furthermore, with respect to Yard 105 and all other yards, documents showing the true replacement costs might prove that the values Copart reported to U.S. Fire for purposes of premium calculations were misrepresented.

///

**DOCUMENT REQUEST NO. 22:**

22. For each building owned by you at any time since July 1, 2003, all documents indicating or reflecting what would be your loss of business income in the event of damage to the building.

**RESPONSE TO DOCUMENT REQUEST NO. 22:**

Copart objects to this request in that it is vague, ambiguous, overbroad, unduly burdensome and seeks documents neither relevant to the issues in this action nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to these objections, Copart will produce documents related to its property policies issued by USFIC.

**BASIS FOR COMPELLING FURTHER RESPONSE TO REQUEST NO. 22:**

Copart's objections lack merit. As evidenced by its willingness to produce "documents related to its property policies issued by USFIC," Copart understands the concept of projected business income losses, information that Copart frequently submitted to its insurers. Copart offers no explanation as to why the request is "unduly burdensome." Without such justification, the objection is without merit. Obiajulu v. City of Rochester, 166 F.R.D. 293, 295 (W.D. N.Y. 1996).

Copart's relevancy objection also lacks merit. Information relevant to a party's claims or defenses is discoverable. Fed. R. Civ. P. 26(b)(1); Sanyo Laser Products, Inc. v. Arista Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003). Even if not directly relevant to U.S. Fire's claims and defenses, such information is relevant to the subject matter of this lawsuit and is therefore discoverable on a showing of good cause. Fed. R. Civ. P. 26 (b)(1); Sanyo Laser Products, Inc. v. Arista Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003). Moreover, the information is discoverable if it appears reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1); Vardon Golf Co., Inc. v. BBMG Golf Ltd., 156 F.R.D. 641 (N.D. Ill. 1994).

Documents indicating or reflecting the Copart's potential loss of income in the event of damage to the yards would be relevant on two fronts. First, with respect to Yard 105, documents showing the true potential loss might impeach the damages Copart is seeking to

1 recover in this litigation. Furthermore, with respect to Yard 105 and all other yards, documents  
2 showing the true potential loss might prove that the values Copart reported to U.S. Fire for  
3 purposes of premium calculations were misrepresented.

4 **DOCUMENT REQUEST NO. 23:**

5 23. For each building owned by you at any time since July 1, 2003, all documents  
6 indicating or reflecting what would be your extra expenses in the event of damage to the  
7 building.

8 **RESPONSE TO DOCUMENT REQUEST NO. 23:**

9 Copart objects to this request in that it is vague, ambiguous, overbroad, unduly  
10 burdensome and seeks documents neither relevant to the issues in this action nor reasonably  
11 calculated to lead to the discovery of admissible evidence. Without waiving and subject to these  
12 objections, Copart will produce documents related to its property policies issued by USFIC.

13 **BASIS FOR COMPELLING FURTHER RESPONSE TO REQUEST NO. 23:**

14 Copart's objections lack merit. As evidenced by its willingness to produce "documents  
15 related to its property policies issued by USFIC," Copart understands the concept of projected  
16 extra expense, information that Copart frequently submitted to its insurers. Copart offers no  
17 explanation as to why the request is "unduly burdensome." Without such justification, the  
18 objection is without merit. Obiajulu v. City of Rochester, 166 F.R.D. 293, 295 (W.D. N.Y.  
19 1996).

20 Copart's relevancy objection also lacks merit. Information relevant to a party's claims  
21 or defenses is discoverable. Fed. R. Civ. P. 26(b)(1); Sanyo Laser Products, Inc. v. Arista  
22 Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003). Even if not directly relevant to U.S. Fire's  
23 claims and defenses, such information is relevant to the subject matter of this lawsuit and is  
24 therefore discoverable on a showing of good cause. Fed. R. Civ. P. 26 (b)(1); Sanyo Laser  
25 Products, Inc. v. Arista Records, Inc., 214 F.R.D. 496 (S.D. Ind. 2003). Moreover, the  
26 information is discoverable if it appears reasonably calculated to lead to the discovery of  
27 admissible evidence. Fed. R. Civ. P. 26(b)(1); Vardon Golf Co., Inc. v. BBMG Golf Ltd., 156  
28 F.R.D. 641 (N.D. Ill. 1994).

Documents indicating or reflecting the Copart's potential extra expenses in the event of damage to the yards would be relevant on two fronts. First, with respect to Yard 105, documents showing the true potential loss might impeach the damages Copart is seeking to recover in this litigation. Furthermore, with respect to Yard 105 and all other yards, documents showing the true potential loss might prove that the values Copart reported to U.S. Fire for purposes of premium calculations were misrepresented.

#### **PRIVILEGE LOG**

##### **9/14/05 email from Patrice McIntyre (Marsh) to Heather Luck (Copart)**

Parties withholding otherwise discoverable documents as privileged should identify and describe the documents in sufficient detail to enable the demanding party to "assess the applicability of the privilege or protection." Fed. R. Civ. P. 26(b)(5). Copart failed to provide sufficient information to justify its claim of privilege for this communication. The log does not identify Patrice McIntyre or Heather Luck as an attorney. So far as U.S. Fire can independently determine, neither is an attorney—McIntyre is an account representative at Marsh, and Luck is apparently a non-attorney employee of Copart.

Moreover, this particular communication occurred a month before Hurricane Wilma—i.e., long before any legal dispute between Copart and U.S. Fire arose.

##### **7/24/05 email involving Greg Adler**

Parties withholding otherwise discoverable documents as privileged should identify and describe the documents in sufficient detail to enable the demanding party to "assess the applicability of the privilege or protection." Fed. R. Civ. P. 26(b)(5). Copart failed to provide sufficient information to justify its claim of privilege for this communication. U.S. Fire understands that Greg Adler may be an attorney, but the date of the communication precedes this claim, suggesting that the email may not involve legal advice.

##### **7/31/07 email from Mike Carson to Will Franklin/Simon Rote**

Parties withholding otherwise discoverable documents as privileged should identify and describe the documents in sufficient detail to enable the demanding party to "assess the applicability of the privilege or protection." Fed. R. Civ. P. 26(b)(5). Copart failed to provide

1 sufficient information to justify its claim of privilege for this communication. The log does not  
2 identify Mike Carson, Will Franklin, or Simon Rote as an attorney. So far as U.S. Fire can  
3 independently determine, they are all non-attorney employees of Copart.

4 Moreover, this particular communication occurred a month before Hurricane Wilma—  
5 i.e., long before any legal dispute between Copart and U.S. Fire arose.

6 **1/22/07 email from Simon Rote to Will Franklin and Jim Meeks**

7 Parties withholding otherwise discoverable documents as privileged should identify and  
8 describe the documents in sufficient detail to enable the demanding party to “assess the  
9 applicability of the privilege or protection.” Fed. R. Civ. P. 26(b)(5). Copart failed to provide  
10 sufficient information to justify its claim of privilege for this communication. The log does not  
11 identify Jim Meeks, Will Franklin, or Simon Rote as an attorney.

12 **12/27/05 email from Jay Adair to Will Franklin, et al.**

13 Parties withholding otherwise discoverable documents as privileged should identify and  
14 describe the documents in sufficient detail to enable the demanding party to “assess the  
15 applicability of the privilege or protection.” Fed. R. Civ. P. 26(b)(5). Copart failed to provide  
16 sufficient information to justify its claim of privilege for this communication. The log does not  
17 identify Jay Adair or Will Franklin as an attorney.

18 **11/28/06 email from Heather Luck (Copart) to Patrice McIntyre (Marsh)**

19 Parties withholding otherwise discoverable documents as privileged should identify and  
20 describe the documents in sufficient detail to enable the demanding party to “assess the  
21 applicability of the privilege or protection.” Fed. R. Civ. P. 26(b)(5). Copart failed to provide  
22 sufficient information to justify its claim of privilege for this communication. The log does not

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 identify Patrice McIntyre or Heather Luck as an attorney. So far as U.S. Fire can independently  
2 determine, neither is an attorney—McIntyre is an account representative at Marsh, and Luck is  
3 apparently a non-attorney employee of Copart.

4 DATED: November 28, 2007

5 BULLIVANT HOUSER BAILEY PC

6  
7 By /s/ Samuel H. Ruby.  
8 Samuel H. Ruby

9 Attorneys for Defendant  
10 United States Fire Insurance Company  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28